IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 4075 of 2001 (S/S)
Old No. 34515 of 1998

R.K. Ojha …….. Petitioner

Versus

Union of India & others …….. Respondent

Mr. U.K. Uniyal, learned counsel for the petitioner.
Mr. Rakesh Thapliyal, learned Standing Counsel for Union of India.

Hon'ble P.C. Verma, A.C.J.

This writ petition has been filed by the petitioner challenging the order of dismissal dated 4.6.98 and 23.7.97 passed by respondents No. 2 & 3 respectively.

Heard Mr. U.K. Uniyal, learned counsel for the petitioner and Mr. Rakesh Thapliyal, learned Standing Counsel, Union of India.

Petitioner was appointed on 3.9.1970 on the post of Constable in Central Industrial Security Force by the D.I.G. i.e. respondent No. 2, who was the appointing authority. On 19.4.1972, petitioner was promoted on the post of Head Constable by the I.G. Departmental proceedings were held against him and the petitioner was sent to jail. The petitioner was released on bail on 31.8.1996 and on 6.9.1996, he raised preliminary objection / explanation before the Group Commandant that the departmental enquiry be stopped till the decision of the trial court as the charges were under trial. But respondent No. 3 appointed Sri S.C. Mishra, Dy. Commandant as Enquiry Officer who issued notice on 11.2.1997 to the petitioner and 25.2.1997 was fixed for his appearance. On that day, petitioner appeared and on 15.2.1997 he moved an application before the Enquiry Officer requesting him to furnish all relevant documents to enable him to participate in the enquiry proceedings. But the said application of the petitioner was not considered and the Enquiry Officer submitted his report on 12.5.1997 to respondent No. 3. Thereafter, the respondent No. 3 supplied the copy of the Enquiry Report to the petitioner on 14.5.1997 and directed the petitioner to file representation within 15 days. But respondent No. 3 without waiting for explanation of the petitioner, passed the final order on 23.7.1977

and dismissed him from service. Against this order, petitioner preferred an appeal before respondent No. 2, which was also dismissed by respondent No. 2 vide order dated 4.6.1998.

Appointing Authority of the post of the petitioner is D.I.G. as admitted by the learned counsel for the parties. The impugned order of dismissal dated 23.7.1997 has been passed by the Commandant, who is an officer of the S.P. Rank, which is subordinate to D.I.G. Therefore, the order of dismissal passed is in violation of Article 311(1) of the Constitution of India.

Without going on other aspects of the matter, the impugned order of dismissal dated 23.7.1997 passed by respondent No. 3 is, hereby, set aside. It is open for the Authorities to pass appropriate order in accordance with law. Petitioner will be entitled to all the consequential benefits of the setting aside of the dismissal order.

With the aforesaid observations, the writ petition is disposed of finally. No order as to costs.

(P.C. Verma, A.C.J.)

Dt. 22,06.2004

G